SUPREME COURT, U. S.

JAN 14 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 978

M. S. CHAMBLISS,

Petitioner,

v.

COCA-COLA BOTTLING COMPANY, WILLIAM O. MASHBURN, JR., and GOLDMAN, SACHS & COMPANY,

Respondents.

BRIEF OF RESPONDENTS OPPOSING PETITION FOR WRIT OF CERTIORARI

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Respondents respectfully submit that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit in this case should be denied.

OPINIONS BELOW; JURISDICTION

Petitioner has given the correct citations to the opinions in this case of the District Court and of the Court of Appeals for the Sixth Circuit. Respondents also agree that the Petitioner's statement as to jurisdiction is essentially correct.

QUESTIONS PRESENTED

While respondents contend that this case presents no questions meriting review by this Court, they submit that

the questions in this case are not as stated by petitioner, but are as follows:

I. Where the Amended Complaint failed to state facts affirmatively showing that the action purportedly based on violations on the Securities Act of 1933 and the Securities Exchange Act of 1934 was commenced within the maximum three-year period provided by those Acts for commencement of such actions; where the action was commenced March 22, 1965 but the plaintiff conceded and the facts showed that all actions and acts complained of had been completed at the latest on December 30, 1960; and where the plaintiff failed to allege any concealment or tolling of the limitations period; were the Courts below correct in holding that the plaintiff failed to state a claim upon which relief could be granted and that the action was barred by the 3-year maximum statute of limitations contained in both securities Acts?

II. Where petitioner had been a member of the class in two prior similar actions against respondent Coca-Cola Bottling Company, had been an active and named party to the appeal from the judgment in the second action and had unsuccessfully sought certiorari in this Court from the judgment of the Court of Appeals in the second such action, and both such prior actions had ultimately resulted in the ruling that a federal district court sitting in Tennessee lacked personal jurisdiction over respondent Coca-Cola, were the Courts below justified by the principle of res judicata in dismissing petitioner's action again brought in the federal district court in Tennessee against respondent Coca-Cola on the ground that the district court sitting in Tennessee lacked personal jurisdiction over respondent Coca-Cola?

STATUTES AND RULE INVOLVED

Respondents contend that the application of Rule 23 of the Federal Rules of Civil Procedure is not involved in this case.

Further, petitioner's Petition to this Court fails to cite the provisions of the statutes claimed to be involved in this case, and fails to set forth their pertinent text either in its body or in its appendix, as required by Rule 23 of this Court, section 1, subdivision (d). Indeed, the Petition herein also fails to cite the provisions of Rule 23, Fed. R. Civ. P., claimed to be involved, and likewise fails to set out the text of those provisions either in its body or in its appendix.

For this failure to comply with the Rules of this Court, especially where the statutes are as lengthy and complex as are the two securities Acts claimed to be involved, respondents submit that the Petition herein should be dismissed. Although for the convenience of the Court respondents would like to set out the text of the pertinent provisions, respondents are not certain which provisions petitioner claims are pertinent. The fact that there were substantial amendments to the Securities Exchange Act in 1964 and to Rule 23, Fed. R. Civ. P., in 1966 makes it virtually impossible for respondents to oblige either petitioner or the Court, for respondents do not know whether petitioner relies on the pre-amendment or the post-amendment provisions. Therefore respondents believe that the Petition herein should be dismissed for this failure to comply with Rule 23 of this Court in a case where setting out the provisions relied on is virtually essential to the presentation of the case and to intelligent argument.

STATEMENT OF THE CASE

This case is yet another in a series of related actions filed to challenge the 1960 merger and recapitalization of

respondent Coca-Cola.[1] All these suits have been filed in the United States District Court for the Eastern District of Tennessee, where in personam jurisdiction over respondent Coca-Cola was at best doubtful, rather than in the Southern District of Ohio, where personal jurisdiction of respondent Coca-Cola at all material times was certain.

The history of these actions is set forth in the appendix to the Petition herein, pages 40-43. As noted therein, the first and third of these suits were class actions, both of them went to the Court of Appeals for the Sixth Circuit, and in both of them the judgments that the District Court in Tennessee lacked personal jurisdiction over respondent Coca-Cola were affirmed. In the third suit, M. S. Chambliss, the petitioner herein, as an intervenor actively prosecuted the appeal to the Court of Appeals and actively sought review by certiorari of that court's judgment in this Court.

Undaunted by the consistent adjudications that the federal court in Tennessee lacked in personam jurisdiction over respondent Coca-Cola, she filed this suit on March 22, 1965 in that same Court—two weeks after this Court had denied her petition for certiorari in the third action. In this instant case for the first time respondents William O. Mashburn, Jr. and Goldman, Sachs & Company were named as defendants.

On October 27, 1965 all respondents filed in the District Court a motion to dismiss the instant action for lack of jurisdiction, for improper venue, and for failure to state a claim upon which relief should be granted. The District Court granted the motion, and ordered dismissal for failure to state a claim, for improper venue, and for lack of per-

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[1] Respondent Coca-Cola is the Coca-Cola Bottling Corporation which was named as a party in the prior suits; the somewhat erroneous designation of it as Coca-Cola Bottling *Company* in this action is immaterial.

sonal jurisdiction over the respondents (see appendix to Petition herein, pp. 20, 21).

On appeal to the Court of Appeals for the Sixth Circuit the judgment of the District Court was affirmed. A petition for rehearing was denied. The instant Petition followed.[2]

ARGUMENT

I. The Courts below were correct in holding that the limitations periods for commencement of actions under both the Securities Act of 1933 and the Securities Exchange Act of 1934 barred this action.

There is no dispute here that the longest period provided for commencing an action for violations of either the Securities Act of 1933 or the Securities Exchange Act of 1934 is three years after the violation. And there can be

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[2] While respondents believe that in this case and in its present posture the matter is not material, respondents take vigorous exception to the statement at page 4 of the Petition herein that, "The language of both Courts becomes especially significant in view of the fact Goldman Sachs sent a representative from New York to Chattanooga and was paid $25,000.00 by the Corporation (undisclosed) and also two Chattanooga brokers were paid a total of $20,000.00 for services in connection with the transaction." Petitioner makes no reference to the record to support this statement, and the facts so stated are not even alleged in the Amended Complaint.

By Answers to Interrogatories filed in this case in the District Court on November 29, 1965, Answer number 24, respondent Coca-Cola stated, "The following amounts were paid for study of the proposed merger and recapitalization from the standpoint of the Class A shareholders:

Millard & Company, Chattanooga, Tennessee ..	$ 7,500.00
Elder & Company, Chattanooga, Tennessee	7,500.00
Goldman, Sachs & Company, New York, New York	12,500.00"

So far as respondents are aware, these amounts reported in that Answer are the correct ones; in the instant case this is the only place in the voluminous record where facts as to such amounts are to be found. Affidavits filed in the first suit on August 23 and September 28, 1961, also stated the $7,500.00 figure for each of the two Chattanooga brokers.

Respondents submit that the statement in the Petition at page 4, of which they complain is unsupported, incorrect, and improper.

no dispute that the instant action was commenced on March 22, 1965.

From the District Court opinion in this case, page 14 of the appendix to the Petition herein; from the clear intimation at page 4 of petitioner's Brief in the Court of Appeals, page 14 of the appendix hereto; from the affidavit of William O. Mashburn, Jr. filed in the companion case in the District Court and, in the appendix, in the Court of Appeals, pages 14-19 of the appendix hereto; and from the petitioner's own testimony at page 4 of her deposition of November 30, 1965, filed in this case December 3, 1965, page 19 of the appendix hereto, it is clear that all of the acts, activities, and actions complained of in this case occurred during the year 1960, culminating on December 30, 1960.

So from the simple statement of the facts it is clear that the instant action was commenced some four and one-quarter years after the acts complained of, and thus was clearly barred by the statutes of limitations contained in both of the federal securities Acts under which it was brought.

Petitioner's claim that the pendency of other similar actions tolled the running of the statutes of limitations is of no help. There is no federal "savings" statute to create such a tolling, and no federal common law exists to authorize such a tolling. The Court of Appeals cases cited by petitioner to support her claim of tolling may stand for the principle that once a class action timely commenced has proceeded to judgment, a member of the class may intervene and obtain the benefit of that judgment even if at the time of such intervention his own independent action would have been barred by the statute of limitations. None of those cases or any others of which respondents are aware involved a situation similar to petitioner's, and none of

those cases or any others of which respondents are aware hold that a failure of prior similar actions on jurisdictional grounds gives any plaintiff one extra minute beyond the limitations period to file an action on his own behalf or on behalf of a class which he represents. By the analysis of these cases the claim that the decision below was in conflict with those of other Courts of Appeals is shown to be without substance.

Nor does this Court's ruling in *Burnett* v. *New York Central R. R.*, 380 U.S. 424 (1965), aid the petitioner. That decision, considered by the District Court (see appendix to the Petition herein, pp. 17-19) and argued to the Court of Appeals in this case, involved a suit for personal injuries under the Federal Employers Liability Act which failed in the state court for improper venue. The subsequent action in the federal court, filed eight days later and about three months after the running of the limitations period, was held timely on the theory that timely commencement of the state court action had tolled the running of the limitations period; in effect, the Court engrafted onto the FELA limitation period a proviso that timely filing of a state court action under the FELA tolls the running of the FELA statute of limitations. This Court did not have before it a case where prior successive actions had been filed in the federal court in the same district and had all failed for lack of jurisdiction. Further, in *Burnett* the statute on which the plaintiff relied and his precise cause and theory of action had been clearly indicated from the start of the first suit; here this is far from the case. In addition, in *Burnett* the action was for personal injuries, not a claimed violation of property rights; this Court noted that the FELA limitations provision had earlier been held to be "not totally inflexible" (380 U.S. at 427), and relied on the humanitarian policy of the Act, which

broadened railroad employees' rights to recover for job-connected injuries in interstate commerce; if the action in *Burnett* had been allowed to fail, the injured plaintiff would presumably have gone uncompensated. Respondents submit that the courts below correctly interpreted the *Burnett* holding as limited to FELA cases in refusing to rule that the limitations periods of the securities Acts had been tolled by the prior actions, and that the lack of a federal "savings" statute meant that the statute of limitations continued to run against all possible plaintiffs from December 31, 1960 to its expiration on December 30, 1963 —some one and one-quarter years before the instant action was commenced.[3]

While the bar of the statute of limitations is clear from the uncontested facts, the District Court ruling rested not upon the fact that the limitations period had expired, but upon the legal ground that where, as with the two securities Acts, an enactment has created new rights of action and also fixed the time within which such actions must be commenced, commencement of such an action within the time provided is an indispensable condition to maintaining the action, and upon the expiration of the time limited both the right and the remedy cease to exist. In such a case the complaint must affirmatively show that the action is brought within the limited period, and its failure to do so results in failure to state a claim upon which relief can be granted. The Amended Complaint in this action (appendix to Petition herein, pp. 30-37) clearly fails to make such an affirmative showing of compliance with the limitations provisions of the securities Acts, and further makes

[3] As to respondents Goldman, Sachs and William O. Mashburn, Jr. the case is even stronger: they had never been sued on the causes of action asserted in the instant case until it was filed, some four years after the actions complained of. Under no possible theory could there have been a tolling of the statute of limitations as to them.

no allegations to show the tolling of such periods claimed by petitioner. Thus the Amended Complaint failed to state a cognizable claim. See *Newberg* v. *American Dryer Corp.*, 195 F. Supp. 345 (E.D. Penna. 1961), at 352:

> "The cases deciding the necessity of pleading compliance with this section 13, the limitations provision of the Act (15 U.S.C.A. § 77m) have arisen from a variety of situations. . . . All, however, have held compliance with the limitations section an essential ingredient of a private action which must be affirmatively asserted. * * *";

Premier Industries, Inc. v. *Delaware Valley Financial Corp.*, 185 F. Supp. 694, 696 (E.D. Penna. 1960); *Shonts* v. *Hirliman*, 28 F. Supp. 478 (S.D. Cal. 1939); *Rosenberg* v. *Hano & Co.*, 26 F. Supp. 160 (E.D. Penna 1938); and *Fischman* v. *Raytheon Mfg. Co.*, 9 F.R.D. 707 (S.D. N.Y. 1949), reversed on other grounds, 188 F.2d 783 (2d Cir. 1951). See also 3 Loss, SECURITIES REGULATION 1744 (2d ed. 1961).

Thus in addition to the clear showing that the statutes of limitation had run against claims under both federal securities Acts when this instant action was commenced, the Amended Complaint also failed to state a claim upon which relief could be granted because it failed to make the required allegations showing compliance with the limitations provisions of those Acts, or even to make any allegations to support the petitioner's claim of tolling of the limitations periods.

So it is clear that the courts below ruled correctly and in harmony with settled law; their rulings are not in conflict with those of other Courts of Appeals; and no purpose would be served by a further review of this case by this Court.

II. The principle of res judicata barred petitioner from further litigating the question of personal jurisdiction of the District Court sitting in Tennessee over respondent Coca-Cola, and the Court of Appeals and the District Court correctly dismissed the action as to respondent Coca-Cola.

From the District Court opinion, pages 14-15 of the appendix to the Petition herein, it is clear that whatever acts, allegedly wrongful under any theory, were committed by respondent Coca-Cola and the other respondents, such acts were committed by December 30, 1960 at the latest. (See the references to the factual support for this statement at page 6 supra.) So whatever grounds might exist in this case for obtaining jurisdiction over respondent Coca-Cola under either federal securities Act relied upon by petitioner as the basis for such jurisdiction also existed at the time of the commencement of the two prior class actions against respondent Coca-Cola which were disposed of by the Sixth Circuit in 1963, *Smartt* v. *Coca-Cola Bottling Corp.*, 318 F.2d 447, and 1964, *Smartt* v. *Coca-Cola Bottling Corp.*, 337 F.2d 950, certiorari denied sub nom. *Chambliss* v. *Coca-Cola Bottling Corp.*, 380 U.S. 934 (1965). In the instant case petitioner does not even claim any concealment or any discovery of new facts.

In both the prior cases in the Sixth Circuit the issue decided was whether respondent Coca-Cola was amenable to personal jurisdiction of the federal District Court in Tennessee. In both cases the Sixth Circuit decided that the District Court lacked personal jurisdiction over respondent Coca-Cola.

At this point what is perhaps the modern classic statement of the rule of res judicata is pertinent:

> "* * * The general rule of res judicata applies to repetitious suits involving the same cause of action. * * * The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits

> of a cause of action, the parties to the suit and their privies are thereafter bound 'not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' * * *"

This is the statement in *Commissioner* v. *Sunnen*, 333 U.S. 591 (1948), at 597. *Angel* v. *Bullington*, 330 U.S. 183 (1947), stated it in this way, at 192-93:

> "* * * Litigation is the means for vindicating rights, but it may also involve unwarranted friction and waste. The doctrine of res judicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion. * * * And it has gone through, *if issues that were or could have been* dealt with in an earlier litigation are raised anew between the same parties. * * *" (Emphasis added.)

Also in *Stockton* v. *Ford*, 59 U.S. 418 (1856), the Supreme Court held that a matter properly involved in a former case, which might have been raised and determined there, was concluded by the judgment in the former case, and that the neglect of the plaintiff to avail himself of such a matter "furnishes no reason for another litigation."

The principles of res judicata also apply to questions of jurisdiction, whether it is jurisdiction of the subject matter or the parties, and this rule prevails with respect to a decision denying jurisdiction as well as to one sustaining it. *Johnson* v. *Muelberger*, 340 U.S. 581 (1951); *Treinies* v. *Sunshine Mining Co.*, 308 U.S. 66 (1939); 46 AM. JUR. 2d *Judgments* § 33 (1969).

So under the salutary rule of res judicata, not only all grounds for personal jurisdiction over respondent Coca-Cola which were actually raised in the prior litigation, but also all such grounds which *could have been dealt with* in

the prior litigation have been finally adjudicated adversely to petitioner, and she cannot now rely upon grounds for jurisdiction which existed, if at all, as openly when the two cases referred to above were filed and adjudicated as when this instant action was commenced.

Petitioner was an active party in the appeal decided by the Sixth Circuit in 1964 (see 337 F.2d 950 at 951), and actively sought certiorari in this Court (from the caption of the case, 380 U.S. 934). She was also one of the class represented by the plaintiffs in the appeal decided by the Sixth Circuit in 1963. Certainly the judgment in the 1964 appeal foreclosed her new attempt to obtain personal jurisdiction in Tennessee over respondent Coca-Cola; and just as certainly the judgment in the 1963 appeal also forecloses her and all others of the class. For it is settled that the judgment or decree in a class action concludes the parties and their privies as to the same issues involved in a later action—including jurisdictional issues (see above)—even if many of the class did not themselves participate in the litigation or were not even aware of the pendency of the action. The decree in such a class suit is binding upon all members of the class who were adequately represented by the parties plaintiff. *Hansberry* v. *Lee*, 311 U.S. 32 (1940); *Wren* v. *Smith*, 410 F.2d 390 (5th Cir. 1969); *Ingersoll* v. *Brotherhood of Locomotive Engineers*, 307 F.2d 257 (6th Cir. 1962); *System Federation, AFL* v. *Reed*, 180 F.2d 991 (6th Cir. 1950). There is no contention that plaintiff and her class were not adequately represented by the plaintiffs in the prior cases.

Therefore the principle of res judicata furnishes a strong base for the affirmance by the Sixth Circuit of the part of the District Court's judgment in this case holding that the District Court lacked jurisdiction of respondent Coca-Cola. Because that judgment and affirmance rest upon settled legal principles, respondents submit that further review by this Court would serve no purpose.

CONCLUSION

Respondents submit that there are no special or important reasons for review of this case by this Court, for the issues in it have all been adjudicated in conformity with established principles and no new questions of constitutional law, statutory construction, or basic justice are presented by this case for decision by this Court.

Respectfully submitted,

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January 16, 1970.

APPENDIX

A. Excerpt from Petitioner's Brief to the United States Court of Appeals for the Sixth Circuit in this case, page 4:

> "The District Court notes that this is a class action (42a), and discusses the fact that the questions presented were first raised by a suit filed on June 20, 1961, *about six months after the culmination of the actions taken by the defendants* that initially raised the question of plaintiff's title to the stock in question. That suit was a class action, and alleged a violation of the Securities Exchange Act of 1934. . . ." (Emphasis added.)

B. Affidavit of William O. Mashburn, Jr. in support of Motion for Security, filed October 25, 1967 in the companion case in the United States District Court for the Eastern District of Tennessee, Southern Division (No. 4689, J. Polk Smartt et ux. v. Coca-Cola Bottling Company), and in the appendix filed in the appeal of that case to the Sixth Circuit (No. 19082 in the Court of Appeals):

[Caption Omitted]

AFFIDAVIT OF WILLIAM O. MASHBURN, JR. IN SUPPORT OF MOTION FOR SECURITY

STATE OF OHIO)
COUNTY OF HAMILTON) SS.

William O. Mashburn, Jr., being first duly sworn, deposes and says:

1. He is President of Coca-Cola Bottling Corporation, the defendant in this cause.

2. This lawsuit challenges a merger and recapitalization of the defendant in 1960. The history of that merger and recapitalization is as follows:

On November 8, 1960, at a directors' meeting duly called and held, the plan for merger and recapitalization was adopted by the affirmative and unanimous vote of the directors of Coca-Cola Bottling Corporation.

On December 27, 1960, at a shareholders' meeting duly called and held, said plan was adopted and ratified by the affirmative vote of more than two-thirds (2/3) of all the issued and outstanding shares of stock of Coca-Cola Bottling Corporation.

On December 30, 1960, the effective date of said plan, and pursuant thereto, all the issued and outstanding shares of Class A stock of Coca-Cola Bottling Corporation, including those owned by the plaintiffs in the present case, were converted into debentures.

3. Immediately prior to the effective date of said merger and recapitalization, the authorized stock of Coca-Cola Bottling Corporation consisted of 20,000 shares of Class A stock, all of which shares were issued and outstanding, and 20,000 shares of Class B stock, all of which were issued and outstanding.

4. At the time of the filing of the Complaint in this case, No. 4689, the authorized stock of Coca-Cola Bottling Corporation consisted of 19,120 shares of common stock, all of which were issued and outstanding. Neither J. Polk Smartt nor Isabel Smartt, the plaintiffs in this case, owns any shares of this stock.

5. At the time of the filing of the Complaint in this case, the only securities of Coca-Cola Bottling Corporation authorized in addition to the common stock referred to in paragraph 4 above were six percent subordinated debentures of $130 principal amount, due December 30, 1990, having a total principal value of $1,464,540. These are the securities into which the former Class A shares of defendant were converted by the merger and recapitalization of December 27, 1960.

6. As of May 1965 certificates representing 19,811 shares of the defendant's former Class A stock had been exchanged for the $130 debentures. Certificates representing 189 shares of the former Class A stock have not yet been exchanged for the debentures. These are held by:

Name	No. of shares of former Class A stock
J. Polk Smartt	10
(Mrs.) Isabel Smartt	137
(Mrs.) M. S. Chambliss	2
Morris D. Cohen	32
Carl L. Gibson	8
	189.

7. Since the effective date of said merger and recapitalization, five consecutive suits have been filed to contest the legality and effectiveness of that merger and recapitalization, four of them by the plaintiffs in the present case, and all of them unsuccessful. Each of these suits has been filed by John A. Chambliss, Esq., or Jac Chambliss, Esq., and Coca-Cola Bottling Corporation has been a defendant in each of these suits.

8. Coca-Cola Bottling Corporation is the same corporation that was sued as "Cincinnati Coca-Cola Bottling Company" in Civil Action No. 3735 upon the docket of this Court, by John A. Chambliss, Esq., on behalf of J. Polk Smartt and Isabel Smartt, the plaintiffs in this action. Reference is made to the following documents in the Office of the Clerk of this Court:

(a) Complaint in Civil Action No. 3735, filed June 30, 1961.

(b) This Court's Memorandum of March 26, 1962, dismissing Civil Action No. 3735.

(c) Opinion of Sixth Circuit Court of Appeals, dated June 18, 1963, 318 F.2d 447, affirming this Court's dismissal of Civil Action No. 3735.

9. Coca-Cola Bottling Corporation is the same corporation that was sued in Civil Action No. 3878 upon the docket of this Court, by John A. Chambliss, Esq., on behalf of J. Polk Smartt and Isabel Smartt, the plaintiffs in this action. Reference is made to the following documents in the Office of the Clerk of this Court:

(d) Complaint in Civil Action No. 3878, filed May 3, 1962.

(e) This Court's Order of May 5, 1962, dismissing Civil Action No. 3878.

10. Coca-Cola Bottling Corporation is the same corporation that was sued in Civil Action No. 4165 upon the docket of this Court, by John A. Chambliss, Esq., on behalf of J. Polk Smartt and Isabel Smartt, the plaintiffs in this action.

Coca-Cola Bottling Corporation was also the defendant in said Civil Action No. 4165, to the "Amended Complaint" filed therein by John A. Chambliss, Esq., on behalf of Intervenors C. L. Gibson and M. S. (Margaret Sizer) Chambliss.

Reference is made to the following documents in the Office of the Clerk of this Court:

(f) Complaint in Civil Action No. 4165, filed August 27, 1963.

(g) "Amended Complaint" in Civil Action No. 4165, filed September 1963.

(h) This Court's Order of October 31, 1963, dismissing Civil Action No. 4165.

(i) Opinion of Sixth Circuit Court of Appeals, dated October 28, 1964, 337 F.2d 950, affirming this Court's dismissal of Civil Action No. 4165 as to Intervenors C. L. Gibson and M. S. (Margaret Sizer) Chambliss (the original plaintiffs, J. Polk Smartt and Isabel Smartt, having declined to prosecute the appeal).

(j) Order of Sixth Circuit Court of Appeals, dated December 8, 1964, denying Petition to Rehear.

(k) Order of United States Supreme Court, dated March 9, 1965, 380 U.S. 941, No. 828, denying certiorari.

11. Coca-Cola Bottling Corporation is the same corporation that was sued in Civil Action No. 4483 upon the docket of this Court, by John A. Chambliss, Esq., on behalf of M. S. (Margaret Sizer) Chambliss. Reference is made to the following documents in the Office of the Clerk of this Court:

(l) Complaint in Civil Action No. 4483, filed March 22, 1965.

(m) This Court's Opinion of October 4, 1967, ruling that Civil Action No. 4483 should be dismissed for failure to state a claim upon which relief can be granted, for improper venue, and for failure of the plaintiff to obtain personal jurisdiction of the defendants.

12. Prior to the filing of the last of the above suits, Civil Action No. 4483, Coca-Cola Bottling Corporation had incurred expenses, including attorneys' fees, of $17,580.17, in defending the suits and appeals thus far prosecuted by John A. Chambliss, Esq. in connection with the above-described merger and recapitalization, without any plaintiff ever once making a sufficient showing of jurisdiction to convince any court to hear the case. Very substantial additional expenses, including attorneys' fees, have since been incurred by Coca-Cola Bottling Corporation in defending the last of the above-described suits, which expenses and fees are presently being collated in connection with the bond given to secure payment of the same by M. S. (Margaret Sizer) Chambliss and John A. Chambliss, Esq. in the last of the above-described suits.

13. Affiant is advised and believes that the Complaint in the present case is without merit and that there is likely no personal jurisdiction over defendant in this action, but that defending this action will cause substantial expense, including attorneys' fees, to Coca-Cola Bottling Corporation.

14. Under the circumstances outlined above, affiant is advised and believes that it would be just and proper for the Court to require the plaintiffs to post security for the expenses, including attorneys' fees, which Coca-Cola Bottling Corporation may incur in defending the present suit, to stay all further proceedings in this case until such security is furnished, and to dismiss this suit unless such security is furnished within a reasonable time specified by the Court.

/s/ WILLIAM O. MASHBURN, JR.
WILLIAM O. MASHBURN, JR.

[Certification omitted]

C. Excerpt from Deposition of M. S. (Margaret Sizer) Chambliss in the instant case, taken November 30, 1965 and filed in the District Court December 3, 1965:

Page 4:

"Q. [by counsel for defendants, now respondents]: And you are referring to this conversion of your stock into debentures that took place in 1960?

"A. [by Margaret Sizer Chambliss]: Yes."